IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 859 OF 1988

SATISH SHRINIWAS SHETTY)
residing at Mulund (E))
Mumbai 81) .. APPELLANT

vs

THE STATE OF MAHARASHTRA).. RESPONDENTS

Shri Rajendra Shirodkar for appellant

Shri D. S. Mhaispurkar APP

CORAM:-SMT. RANJANA DESAI &

A. S. OKA, JJ.

DATED:- 5th November, 2004

ORAL JUDGMENT:-(Per Smt. Ranjana Desai, J.)

The appellant (for convenience original accused 2) along with one Shabbir Ismail Parkar (original accused 1) was tried in Sessions Case No. 30 of 1987 in the court of Sessions Judge at Ratnagiri for offence under Section 302 read with 34 of the Indian Penal Code ("I.P.C." for short). Both the accused were also charged for voluntarily

causing hurt to PW 1 Santosh Gopal Salunkhe under Section 323 of the I.P.C. Accused 2 was also charged substantively for offence under Section 302 and for offence under Section 504 of the I.P.C. for intentionally insulting PW 1 Santosh Salunkhe and thereby giving him provocation with intent and knowledge that such provocation would cause him to commit breach of public peace. By his judgment and order dated 1/9/1988, the learned Sessions Judge acquitted accused 1. He, however, found accused 2 guilty of offence under Section 302 of the I.P.C. For that offence he was sentenced to suffer R.I. for life. Accused 2 however, was found not guilty of other charges and he was acquitted of the same. Being aggrieved by the said judgment and order so far as it convicts and sentences him for offence under Section 302 of the I.P.C., Accused 2 has preferred this appeal.

2. At the trial, the case of the prosecution was as under:

PW 1 Santosh, PW 2 Sachin Rane, PW 4 Shashikant Vichare, PW 5 Devendra Prasad Aroskar, PW 6 Shivaji Parab, PW 7 Chandrakant Narkar, PW 12 Balkrishna Gawas, PW 13 Satish Samant, PW 14 Deepak Shinde, PW 15 Sunil Ghatge, PW 17 Narayan Tanagade, PW 18 Rajesh Bhosale and deceased Sameer Chawan were students studying in the Polytechnic conducted by Mandar Education Society at Pedhambe, Taluka Chiplun. PW 1 Santosh and deceased Sameer Chawan were friends. They were staying in the adjoining room of the hostel of the polytechnic. The other students were also the residents of the hostel.

According to the prosecution in the year 1986 there was a quarrel between Sanjay

Rane and accused

1. PW 1 Santosh Salunkhe and deceased Sameer had gone to see Sanjay Rane who was injured in that quarrel. Both the accused were present there. They did not like PW 1 Santosh Salunkhe and deceased Sameer going there. Since that day the accused stopped talking with PW 1 Santosh and deceased Sameer.

In August, 1986, there was a quarrel between accused 2 and deceased Sameer because deceased Sameer had asked accused 2 as to why he was teasing and harassing the student by name Ravi Punjabi. After that incident accused 1 and 2 were abusing and taunting PW 1 Santosh, deceased Sameer and others.

In front of the D. Ed. College of the said polytechnic there is a padvi. Beyond that padvi there is some open space and thereafter there is a foot-ball ground.

On 9.2.1987, at about 5-15 p.m. except PW 1 Santosh, other students namely PW 2 Sachin Rane, PW 5 Devendra Prasad Aroskar, PW 6 Shivaji Parab, PW 7 Chandrakant Narkar, PW 12 Balkrishna Gawas, PW 13 Satish Samant, PW 14 Deepak Shinde, PW 15 Sunil Ghatge, PW 17 Narayan Tanagade, PW 18 Rajesh Bhosale and some other boys were playing football on the said football ground. PW 1 Santosh was sitting in the padvi to watch the football game. At about 5-30 p.m. the accused came near that padvi riding on a cycle. They kept aside their cycle at the stand and came to PW 1 and started abusing and assaulting him. Santosh raised cries and on hearing him some of the students including deceased Sameer started coming towards him. PW 2 Sachin Rane, PW 5

Devendra Prasad Aroskar, PW 6 Shivaji Parab, PW 7 Chandrakant Narkar and PW 18 Rajesh Bhosale were amongst them. Deceased Sameer started climbing the steps of the padvi to rescue PW 1 Santosh. Accused 2 held him and then dragged him towards the Suru tree standing to the north of that padvi at a distance of 15 to 20 feet. After going near the tree accused 2 is alleged to have taken out a dagger and dealt two blows with it on the left side of chest of the deceased. Thereby the deceased sustained two stab wounds which started bleeding. After that accused 2 started running away with the dagger in his hand. The deceased hurled a stone towards accused 2 but that did not hit him. The deceased was caught hold of by Shashikant Vichare and others. That time the deceased said that he was stabbed by accused 2. The deceased escaped and walked some distance but was again brought near the said padvi. There he stated that he was stabbed by accused 2. He collapsed and became unconscious. He was then put in the padvi.

From the padvi the deceased was taken near the bakery lying to the north of the foot-ball ground beyond the road in a shopping complex. One of the students i.e. Sandeep Desai brought the jeep of Mr. Patankar, the Director of the hostel to that place. The deceased was put in the jeep and taken to Government Dispensary at Alore. The deceased was examined by PW 8 Dr. Pandharpatte. After some time he was declared dead.

Thereafter PW 1 Santosh Salunkhe came to Alore police station where he lodged his complaint which is at Exhibit 9. This complaint was recorded by P.W. 19 Madhukar Chavan Police Sub-Inspector. Offence came to be registered vide C. R. No. 9 of 1987

under Sections 302, 323, 504 read with Section 34 of the I.P.C. On the basis of this complaint, the investigation started.

Accused 1 came to be arrested at 10 p.m. on the same day. It appears that on 10th February, 1987, at 11 a.m. accused 2 was brought to the police station. He was referred to Medical Officer, Alore under Yadi because there was bleeding from his nose. He was discharged from the hospital on 13.2.1987 and was thereafter arrested at 8-35 a.m. under panchnama Ex. 13. After completion of the investigation, the accused came to be charged as aforesaid.

In support of its case, the prosecution examined as many as 18 witnesses PW 1 Santosh Salunkhe, PW 2 Sachin Rane, PW 4 Shashikant Vichare, PW 5 Devendra Prasad Aroskar, PW 6 Shivaji Parab, PW 7 Chandrakant Narkar, PW 12 Balkrishna Gawas, PW 13 Satish Samant, PW 14 Deepak Shinde, PW 15 Sunil Ghatge, PW 17 Narayan Tanagade, PW 18 Rajesh Bhosale are students. PW 17 and PW 18 claim to be eye-witnesses. PW 4 Shashikant Vichare, PW 6 Shivaji Parab, PW 12 Balkrishna Gawas, PW 13 Satish Samant and PW 14 Deepak Shinde have turned hostile. The medical evidence consists of evidence of PW 8 Dr. Prakash Pandharpatte, PW 9 Dr. Arun Joshi, PW 10 Dr. Patankar and PW 16 Dr. Dange. The details of investigation have been given by PW 19 PSI Madhukar Ganpat Chavan. The defence of the accused was one of denial. They contended that they were falsely implicated. Both the accused filed their written submissions.

3. After perusing the evidence on record the learned Sessions Judge acquitted accused 1

of all the charges and convicted accused 2 as aforesaid and hence this appeal.

4. We have heard at some length Mr. Shirodkar, the learned counsel appearing for the appellant and Mr. Mhaispurkar, learned APP. With the assistance of the learned counsel, we have gone through the evidence and the record of the case.

5. Mr. Shirodkar, learned counsel for the appellant contended that the learned Judge erred in convicting accused 2. He submitted that out of the twelve witnesses examined by the prosecution, two witnesses claim to have seen the actual incident. They are PW 17 Narayan Dattaram Tanavade and PW 18 Rajesh Gajanan Bhosale. Their statements are recorded on 2nd March, 1987 and 23rd March, 1987 respectively. Similarly statement of PW 15 Sunil Vasant Ghatge is recorded on 24th February, 1987. The learned counsel contended that considering the enormous delay in recording their statements the evidence of the witness cannot be relied upon. He further submitted that out of the remaining ten witnesses, five witnesses have turned hostile and hence their evidence will also have to be left out of consideration.

6. According to Mr. Shirodkar, PW 1 Santosh Gopal Salunkhe's evidence does not inspire confidence because whereas in the court he has stated that he saw accused 2 running with a dagger in his hand and the deceased chasing him with a stone and that there was bleeding from the left side of the deceased's stomach, in his statement before the police he has omitted to say so. He has also omitted to say in his police statement that the deceased told him that accused 2 assaulted him with a dagger. Therefore, his evidence cannot be relied upon.

7. So far as other witnesses are concerned, Mr. Shirodkar contended that there are major omissions in their evidence making them totally unreliable witnesses. He drew our attention to those omissions and contended that evidence of such witnesses cannot be relied upon to convict the accused. The learned counsel further contended that there is no discovery of weapon at the instance of accused 2. He submitted that the evidence clearly establishes that the nose of accused 2 was bleeding. Therefore, the blood-stains on the clothes of accused 2 cannot be an incriminating circumstance against him particularly because the blood group of the deceased and that of accused 2 is the same. Mr. Shirodkar contended that the prosecution has not been able to establish motive. The prosecution has failed to establish its case as against accused 1. The learned counsel contended that with this state of evidence, it is difficult to come to a conclusion that the case of the prosecution so far as it relates to the participation of accused 2 is true and hence the order of conviction and sentence must be set aside.

8. As regards delay in recording statements, Mr. Shirodkar relied on Balkrushna Swain v. The State of Orissa, A.I.R. 1971 S C 804 and Ganesh Bhavan Patel & Anr. v. State of Maharashtra (1973) 4 S C C 371. As regards improvements made by the witnesses and the value of the evidence of such witness, Mr. Shirodkar relied on Appanna Yellawwa Madar & Ors., v. State A.I.R. 1956 BOM. 471, Yudhishtir v. State of Madhya Pradesh, 1971 SCC (Cri.) 684 and State of Haryana v. Gurdial Singh & Ors., 1974 Cri. L.J. 1286. The learned counsel also relied on Ramsevak & Ors. v. State of M.P. , 2004 SAR (Cri.) 673.

9. Mr. Mhaispurkar, the learned APP on the other hand submitted that the prosecution has established its case beyond reasonable doubt against accused 2. He submitted that P.W. 1 Santosh's evidence inspires confidence. He is a truthful witness. He has given a graphic account of what he had seen. Though he has not stated in the F.I.R. that he saw the accused running with a dagger and the deceased following him, he has named accused 2 as the assailant of the deceased. The learned APP submitted that the evidence of other witnesses corroborates the evidence of PW 1 Santosh. The omissions in their evidence are not major omissions. He further submitted that the prosecution has given proper explanation as regards delay in recording statements and therefore, the evidence of PW 15, 17 and 18 cannot be discarded on that count. The learned APP further urged that the clothes of accused 2 were bloodstained. The torn pocket of his shirt was found at the scene of offence. These circumstances establish the guilt of accused 2 and hence his conviction may be confirmed. Mr. Mhaispurkar relied on SUCHA SINGH & ANR. V. STATE OF PUNJAB, (2003) 7 S C C 643. and submitted that even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of accused 2, notwithstanding acquittal of accused 1 conviction of accused 2 can be maintained.

10. Before we deal with the rival submissions, it is necessary to refer to the postmortem notes to get an idea about the injuries suffered by the deceased. The postmortem notes have been admitted in evidence by consent. In column 17, the external injuries are described as under:-

1) Stab injury over sternal region at Lt. 6th rib level 1 cm right from 6th left. Costo-sternal junction slightly oblique. (Upper end pointing towards right side)

2 x 1/4 cm on proabing 5 cm deep blood clots + ve.

2) Stab injury over left side of chest in 6th Inter Costal space just below 6th rib horizontal, in mid-axilllary line.

2x1/2 cm on proating 9 cm deep. blood clots + ve.

On internal examination following injuries were disclosed:-

Sternum Fracture lower end 1 cm right from left 6th Cost o-sternal junction. Slightly oblique 2 x 1/4 cm.

Left lung: Stab injury over left lobe, congeted - 2x1/2 x 2 cm.

Pericardium Pericardial tear +ve corresponding to the site of sternal injury - Pericardial cavity contain blood;

Large vessels Stab injury over interior surface of right ventricle. Slightly oblique 2 x 1/4 c.m. x endo-cansium deep.

Cause of death is given as stab injury to the vital organ heart.

11. At the outset we would like to make it clear that we find it difficult to place reliance on the evidence of three witnesses whose statements have been recorded after great delay. Statement of PW 15 Sunil Ghatge is recorded on 24.2.87. In his evidence he has stated that the day after the incident he went to his village and returned after 10 to 15 days.

12. PW 17 is Narayan Tanawade. His statement is also recorded on 2.3.87. He claims to be an eye-witness. He has stated that the day after the incident he along with the father

of the deceased and his brother came to Bombay in an ambulance. According to him he returned to Pedhambe on 1.3.87 because his parents did not allow him to return earlier.

13. PW 18 is Rajesh Bhosale. His statement is recorded on 23.3.87. He has stated that the day after the incident he accompanied others to Bombay. He went to Bombay in the ambulance which took the corpse of the deceased to Bombay. He returned from Bombay after one month because his mental condition was not good and his family members did not allow him to go. After he returned to Pedhambe his statement came to be recorded. It is true that some explanation is offered for the delay. It is quite possible that out of fear these witnesses stayed on in Bombay or perhaps their parents did not allow them to return to the village. But in our opinion, it is risky to rely on such evidence for the possibility of exaggeration or concoction cannot be ruled out. In this connection we may refer to Brahm Singh & Ors. etc. v. The State of Uttar Pradesh, (1972) 3 Supreme Court Cases 388. In that case statements of some of the witnesses were recorded after a delay of twenty five days. The Supreme Court observed that even if the evidence of those witnesses is excluded from consideration, there are still independent witnesses who have fully supported the case of the prosecution. On the basis of that evidence, the Supreme Court confirmed the sentence. While confirming the sentence the Supreme Court observed that the delay in recording statements in the facts of that case did not cut at the root of the prosecution case. It is, therefore necessary to see whether if the evidence of these three witnesses is left out of consideration, the prosecution case can be still held to be proved.

14. PW 1 Santosh Salunkhe has stated that he had been studying in the polytechnic at

Pedhambe for the last about three years. He was staying in a hostel of the said polytechnic. He knew the deceased who was studying in the same class as his but he was pursuing mechanical engineering while this witness was pursuing electronic engineering. The deceased used to stay in a room adjoining his room. In May, 1986, there was a quarrel between Sanjay Rane and Isaq Parkar accused 1. At that time Isaq Parkar had assaulted Sanjay Rane. He and the deceased had gone to see Sanjay Rane. Because of that the accused got annoyed. Thereafter in August, 1986 there was a quarrel between accused 2 and the deceased. Thereafter he and the deceased and two/three others had been taunted by the accused without naming them.

15. According to this witness on 9.12.87 from 5-30 p.m. onwards the deceased, Shashikant Vichare, Sachin Rane, Chandrakant Narkar, Shivaji Parab and Satish Sawant and others were playing football on the college ground. He was then sitting in a padvi adjoining the said ground. After some time the accused arrived there riding on a cycle. They sat by his side. They started abusing him. Hearing that the deceased, Shivaji Parab, Sachin Rane and Chandrakant Narkar came to him. Accused 1 started giving him fist blows. Samir Chavan, the deceased, Shivaji Parab and Narkar intervened to rescue him. Then accused 2 pushed the deceased backward towards one tree. When accused 1 was assaulting him he heard cries of the deceased and he looked at him. He saw accused 2 running with a dagger in his hand. The deceased was chasing him with a stone in his hand. He saw bleeding from left side of the stomach of the deceased. Then the deceased came near him and told him that he was assaulted by accused 2 and then he became unconscious. Thereafter he fell down. He saw that there were two injuries on the left side of chest of the deceased. Then he, Mangesh Tanawade, Sachin Rane, Devendra

Aroskar and Shashikant Vichare took the deceased to the Government Medical Officer. It was about 6-30 p.m. The jeep of the Rector was brought for the purpose of taking the deceased to the dispensary by Sandeep Desai. After 10 to 15 minutes it was reported that Samir (the deceased) had died.

16. This witness then went to Alore Police Station and gave information. PSI Madhukar Chavan recorded his complaint which is at Exh. 9. According to this witness at the time of the incident the accused was wearing blue colour T-shirt and blue pant. He showed the place of incident to the police. At that place the pocket of the T-shirt of accused 2 Satish was lying. It was attached under panchnama. When the said pocket Muddemal Article No. 8 was shown to him in the court, he identified it as being the same pocket.

17. The evidence of this witness is attacked by Mr. Shirodkar on the ground that there are material omissions which make him an unreliable witness. It appears that while he has stated in the court that he was assaulted in the padvi, he has not stated so in his police statement. While in the court he has stated that he saw accused 2 running with a dagger and the deceased chasing him with a stone, this is not found in the F.I.R. He has also not stated in the F.I.R. that the deceased told him that he was assaulted by accused 2 with a dagger and then he collapsed.

18. It is true that in the F.I.R. these facts are not mentioned. This witness does not claim to have witnessed the actual assault. In the F.I.R. he has stated that when accused 1 and 2 began to abuse him and beat him, the deceased came to rescue him. Accused 2 pulled him by the side, beat him with hands and stabbed him with sharp weapon. We may quote

the relevant paragraph from the F.I.R.;

"So, today on date 9-2-87 at about 6 O'clock in the evening while foot-ball play was going on, on the ground in front of B. Ed. college of Mandar Education Technical Institute at Bherade in Pedhambe village, and when I was sitting there, keeping past quarrel in mind (1) Shabbir Ismail Parkar of Furus Tal. Khed, (2) Satish Shrinivas Shetti of Mulund, Bombay at present Bharade colony. Both came there with common intention and began to abuse me and beat me with hands, and while my friend Samir Jayawant Chawan of Bhandup, at present at Bharade colony, came forward to rescue me, Satish Shriniwas Shetti, pulled him by the side and beat him with hands and stabbed him with sharp weapon and thus he has committed his murder and hence this is my information."

19. As regards the omissions he has stated that he could not state those facts while lodging the complaint because he was frightened. In the cross-examination he has clearly stated that due to fear of being involved he did not state some facts on 9..2.87. He has again reiterated that the only reason for not stating certain facts while lodging complaint Exh. 9 was fear of being involved and none else. We are unable to attach much importance to the omissions in the evidence of this witness. PW 1 Santosh was only 20 years when this incident took place. He is a student. The incident of stabbing appears to have shocked him. It is natural for him to feel scared. We find him to be a truthful witness because he has candidly stated what he had seen. If he wanted to exaggerate or falsely implicate accused 2 he could have stated that he saw accused 2 stabbing the deceased with a dagger. Though he was scared, he mustered courage, went to the police station immediately after the incident and lodged his complaint. Accused 2's name is

found in the F.I.R. which is lodged soon after the incident. This is very significant. This fact strengthens the prosecution case against accused 2.

20. It is also important to note that apart from PW 1 Santosh and the two accused none else was there at the padvi. The accused started abusing him. Accused 1 started giving fist blows to PW 1 Santosh. That time the deceased and others intervened. Accused 2 pushed the deceased towards the tree. Considering the quarrel that took place between the accused and PW 1 Santosh, in the facts of the case no third person could have stabbed the deceased except accused 2 and that obviously is the reason why PW 1 Santosh has stated that accused 2 stabbed the deceased. In his written statement Exh. 59, accused 2 has admitted that he and accused 1 had gone to watch the football match on their cycles and there was some altercation between PW 1 Santosh and the accused. The presence of the accused is therefore, admitted. The quarrel is admitted. This lends support to the evidence of PW 1 Santosh. There is also significant other corrobation to the evidence of this witness from the evidence on record to which we shall soon advert. We, however, feel that the alleged statement made by the deceased near the padvi that accused 2 had stabbed him will have to be left out of consideration because it is not found in the F.I.R. and there is no corroboration to it from other evidence. This, however, does not weaken the truthful evidence of this witnesses.

21. Another attack made on this witness is that when he was in the hospital while the deceased was being examined, one Rajaram Shinde known as "Appa" was present. He has stated that he did not tell Appa about the incident at that time. This according to Mr. Shirodkar is unnatural and indicates that this witness is lying. We are unable to come to

this conclusion. He has stated that many of the players from the ground had come to the dispensary, and some of them had informed Appa about the incident at his quarters. Therefore, if Appa had got to know about the incident there was no question of this witness telling him anything. We find no difficulty in relying on the evidence of this witness.

22. At this stage to complete the narration, we must note the injuries found on PW 1 Santosh's person. On 11.2.87 at 6-05 p.m. PW 1 Santosh was examined by Dr. Pandharpatte. He found the following injuries on him;

1. Small abrasion at left mandibular angle, 1/2 x 1/4cm. with scab on it.

2. Two small abrasions 1/2 x 1/6th, 2 cm. away from left mandibular angle and on the neck.

3. Small bruise 1 cm. x 1/2 cm. just below the Rt. mipple, with reddish discolouration. The duration of the injuries of 48 hours. Caused by some hard object, such as nail.

23. The next witness is PW 2 Sachin Rane. He was playing football on the college ground. He has deposed about the quarrel which took place at the padvi between the deceased and the accused, he has stated that he and others went towards that place. At that time he saw accused 1 assaulting PW 1 Santosh. PW 1 Santosh called him and Chandrakant Narkar to hold his falling spects. When he and Chandrakant were about to run to hold his spects they heard cries coming from the back. Then he turned back to see and he found that accused 2 was running ahead and the deceased was chasing him. While running one stone fell down from the hands of the deceased. Accused 2 was

carrying something in his hand. Then the deceased came near them. His chest and stomach was blood-stained. The deceased did not speak anything. This witness and Chandrakant Narkar went to the Rector to inform him. By the time they returned the jeep was brought there. The deceased was put in the jeep and the jeep started. In his cross-examination he has stated that he did not see where actually the deceased fell down, because on seeing his blood he immediately left the place.

24. In the court he has stated that he and Chandrakant went to call Mr. Patankar. By the time they returned jeep was brought there and Samir was put in it. But in his police statement he has stated that when he and Chandrakant were near the bakery on way back Sandeep Desai took the jeep and Samir was put in the jeep by the boys present there. This is a slight discrepancy which is of no consequence. It is pointed out that in the court he has stated that on hearing cries he saw backwards and found accused 2 running ahead with something in his hand and the deceased chasing him. In the police statement the omission is only as regards the words 'on hearing cries'. There is no omission regarding his clear statement that he saw accused 2 running ahead and the deceased chasing him and that the chest and abdomen of the deceased were having blood stains. In the cross-examination he has stated that it did not happen that when Santosh asked him and Chandrakant to hold his spects he saw the deceased running and there were bloodstains on his front side. He has clarified that he saw bloodstains while the deceased was returning to the padvi and that was from a distance of 40 feet. The emphasis is only on the distance from which he saw the bloodstains on the person of the deceased. He is firm about the fact that he saw the deceased chasing accused 2 with something in his hand and the chest and stomach of the deceased had blood-stains.

25. Evidence of this witness is criticised on the ground that when the deceased was taken to the hospital, all students including some of the prosecution witnesses were present. He has stated that they were there for about 30 to 45 minutes. Yet according to him he did not learn how and when blow was dealt to the deceased. According to him he was at the police station till midnight. But PSI Chavan did not inquire as to how the incident took place. It is contended that it is inconceivable that the students will not discuss the incident or the police would not ask any questions. From this we are unable to conclude that this witness is a liar. It appears that this incident had instilled fear in the minds of young students. In fact PW 1 Santosh has stated that he did not tell certain things to the police for fear of being involved. Some of the students left the place and went to Bombay and came back after a month. Even this witness was 20 years old. His anxiety to keep aloof is understandable. It is however, significant to note that the F.I.R. was lodged on 9.2.87 at 7-35 p.m. and the statement of this witness was recorded by PSI Chavan on 10-2-87, in which he has candidly disclosed what he had seen. We have no reason to disbelieve this witness.

26. PW 5 Devendra Prasad Aroskar, a student studying at the same polytechnic was about 20 years old at the relevant time. In his evidence he has stated that on 9.2.87 he was playing football alongwith other students. He saw PW 1 Santosh sitting in the verandah. Then he saw PW 1 Santosh and accused 1 fighting. He went to rescue Santosh alongwith PW 2 Sachin and PW 7 Chandrakant. There was a scuffle between accused 2 and the deceased and they went near the Suru tree. Except accused 2 and the

deceased there was no one else near the tree. Then the deceased came near the padvi and collapsed. There were bloodstains on his chest. He went to the bakery to fetch ice. By the time the deceased was taken to the hospital.

27. Evidence of this witness is attacked on the ground that in his police statement he has stated that he saw the incident but in the court he has not so stated. However, no omissions are brought on record as regards the scuffle between accused 2 and the deceased, their going near the suru tree, and the deceased, coming near the padvi and collapsing there with blood stains on his chest. It is significant to note that he has clearly stated that besides the deceased and accused 2, he did not see anybody else near the tree. It is contended that this witness is lying because he has stated that he had gone to the hospital where other prosecution witnesses and students were present but they did not discuss about the assault on Sameer and he did not learn how Sameer was injured. This is unnatural. He is further criticised because he did not go to the police station. We find this criticism to be unjustified. His conduct of keeping himself away from police or stating that there was no discussion with fellow students is natural and appears to be the result of fear. In any case his statement was recorded on 10-2-1987. This witness has deposed about the scuffle between the deceased and accused 2 near the suru tree. He has stated that there was no one else there and that the deceased came and collapsed with bloodstains on his chest. He is firm on this aspect. We find him to be a reliable witness.

28. We then have the evidence of PW 7 Chandrakant Narkar. He is also a student of the same polytechnic. At the time when the incident took place he was about 20 years of age. According to him on 9.2.87 he was playing football with other students. PW 1

Santosh was sitting in the padvi. After sometime he heard some quarrel going on between the accused and the deceased. He alongwith Sachin Rane and deceased Sameer and others went to see what was the matter. They saw the accused and PW 1 Santosh having a scuffle. Spects of PW 1 Santosh were about to fall. As one of them was holding his spects and the other caught hold of him they heard some sound of shouting from the back. They saw accused 2 running ahead and the deceased chasing him from some distance. Vichare held the deceased. There were bloodstains on the person of the deceased. He and Sachin went to inform Mr. Patankar, Mr. Patankar told Sandip Desai to take the jeep there. Sandip took the jeep. By the time he went to that place, the jeep had already left the dispensary.

29. This witness is consistent about the scuffle between accused 1 and PW 1 Santosh and the incident of accused 2 running ahead and the deceased chasing him. The only omission is regarding helping others in putting the deceased in the jeep. That does not affect the main story deposed to by this witness. In the cross-examination he has added that he saw the deceased with injury on the chest when he was running. There is no challenge to this statement.

30. The criticism levelled against this witness is that he has stated that he was in the hospital with other witnesses for 45 minutes and though PSI asked them how the deceased was assaulted, they could not tell him anything about it. This witness does not claim to have seen the actual assault and hence he could not have told the police about it. But this criticism levelled against most of the prosecution witnesses who are students will have to be rejected. It is apparent that these young students were scared and therefore,

did not want to get involved. We do not attach much significance to this circumstance. We do not find any difficulty in relying on this witness whose statement is recorded on the very next day i.e. 10.2.1987.

31. We now come to the evidence of five hostile witnesses. It is an established principle of criminal law that the evidence of a hostile witness need not be discarded entirely. That part of it which is corroborated by other evidence can always be relied upon. In Bhagwan Singh v. State of Haryana, A.I.R. 1976 SC 202, the edifice of the prosecution case rested on the evidence of witness Jagat Singh. He turned hostile. While confirming the conviction on the basis of Jagat Singh's evidence, the Supreme Court observed that where the court gives permission to the prosecutor to cross-examine his own witness, thus characterising him as a hostile witness, that does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony, if corroborated by other reliable evidence.

32. Hostile witness PW 4 Shashikant has admitted that on 9-2-87 when he went to the football playground PW 1 Santosh was sitting in the padvi. PW 6 Shivaji Parab who has turned hostile stated that on 9.2.87 he and others were playing football on the ground; that PW 1 Santosh was sitting in the padvi; that accused 1 and 2 came there on a cycle; that they started abusing PW 1 Santosh and that the deceased turned to separate the quarrel. In the cross-examination he has maintained that assault was going on in the padvi. This portion of his evidence is untouched. PW 12 Balkrishna Gawas has stated that he was playing football on 9-2-87. While playing he heard some commotion. He saw towards the college building. He saw the deceased lying on the ground. He has not

supported the prosecution case thereafter. PW 13 Satish Samant has also turned hostile. According to him on 9-2-87 he was playing football on the college ground. He heard commotion from the side of padvi of the college. He has maintained in the cross that there was commotion at the padvi and that the deceased was injured. These witnesses have been cross-examined by the prosecutor. Portions marked Exh. 47, 49, 50 and 51 from their statements show that before the police they had supported the prosecution case. From the evidence of PW 4 and PW 6 it is clear that on 9-2-87, PW 1 Santosh was sitting in the padvi. From the evidence of PW 6 Shivaji it is clear that accused 1 and 2 came there on a cycle and they started abusing PW 1 Santosh; that the deceased tried to separate the quarrel. All these witnesses admit that there was commotion at the padvi. To this extent the prosecution can always draw support from their evidence. It can be relied upon because there is corroboration to this evidence from the evidence of other prosecution witnesses.

33. We will now refer to certain other circumstances which, in our opinion, are important. PW 3 Prakash Shinde is a pancha to Exh. 12. Exh. 12 is a scene of offence panchnama. Prakash Shinde has said that on 10-2-87 between 9-30 to 10 a.m. he was called by police for panchnama at the polytechnic at Pedhambe. There was one Suru Tree. Near that tree one cloth piece of the pocket of a shirt was found. When muddemal article MA No. 8 was shown to him, he stated that it was the same piece of cloth. Panchnama Exh. 12 refers to the attachment of the said cloth piece of the pocket. This witness is also a pancha to the arrest panchnama Exh. 13 under which accused 2 was arrested. He has stated that on 13/2/87 he was called to the Alore Police Station between 8 to 9 p.m. Accused 2 was present in the police station. He was under arrest. He had put

on blue shirt and dark blue pant. There were bloodstains on the front part of the shirt and on the hip of the pant. The clothes of the accused were attached under panchnama Exhibit 13. When muddemal article No. 14, the shirt and muddemal Article No. 15, the pant were shown to him in the court he identified them as the clothes of accused 2.

34. It is significant to note that in panchnama Ex. 13 while describing the T-Shirt of accused 2 it is stated "The left side of the T-Shirt there is a mark of pocket. It seems that the cloth of the pocket of T-Shirt is torn from its stitches." The chemical analyser's report Exhibit 46 dated 6-10-87 shows that the said cloth piece of the pocket of the T-Shirt was in fact torn from the T-Shirt of the accused 2 which was seized under panchnama Exhibit 13. The result of analysis as per Exh. 46 reads as under:

"Cloth at Exh. No. (5) tally with cloth of T-shirt of exhibit No. (11) with respect to their Physico-chemical and textile characteristics."

This in our opinion is an incriminating circumstance against Accused 2.

35. PW 19 PSI Chavan was attached to Alore Police at the relevant time. He has stated that on10.2.87 at about 8-40 in the morning accused 2 was brought to the police station. There was bleeding from his nose and hence he was referred to medical officer Alore, under police Yadi. PW 9 Dr. Arun Joshi was the medical officer attached to K. P. Hospital Alore. He has stated that on 10.2.87 at 8-45 a.m. accused 2 was referred to him under police yadi. He gave history of blood vomiting but he had no visible injury. Dr. Joshi checked his blood pressure and found it to be normal. He then referred him to

Chiplun. While transferring him to Chiplun he issued medical certificate Ex. 22 wherein he noted "Patient says Blood Vomiting". In the cross-examination he has made it clear that he did not notice any injuries on accused 2 when he had examined him. He has further made it clear that he had not referred the patient to Cottage Hospital, Chiplun for management of head injury.

36. PW 10 Dr. Prakash Patankar was attached to Cottage Hospital, Chiplun at the relevant time. He has stated that he examined accused 2 at 11-05 a.m. He gave history of assault with fist at 8 a.m. on the same day. Dr. Patankar has noted that there was no external injury but fracture was disclosed in his second phalangeal bone of left ring finger. Dr. Patankar clarified that he did not detect any other injury. For fracture he referred him to civil hospital Ratnagiri. He issued medical certificate Exh. 26. In that certificate Dr. Patankar has stated that accused 2 was referred from Alore medical officer for management of head injury. At this stage it must be mentioned that PW 9 Dr. Joshi who had referred accused 2 to Dr. Patankar has clearly stated that he had not referred accused 2 for management of head injury. In Exh. 25 Dr. Patankar has further stated that accused 2 was found to have fracture phalangeal bone left ring finger with head injury. In the cross-examination Dr. Patankar clarified that the head injury which he found was not external. There was nasal bleeding and, therefore,he mentioned it as head injury. He has further stated that patient gave history of nasal bleeding but it was not there at the time of examination. In the same certificate Dr. Patankar has noted that accused 2 was given first aid treatment and was referred to Civil Hospital Ratnagiri for X-ray examination.

37. PW 16 Dr. Moreshwar Dange was attached to Civil Hospital Ratnagiri. He examined accused 2 on 10..2.87. He has stated that time 4-45 mentioned in letter addressed to Medical Officer Cottage Hospital Chiplun by him is a mistake. Dr. Dange found on examination that ring finger of the left hand of accused 2 was swollen with tenderness. There was swelling over nose. There was crack fracture of the proximal phalangeal of the left right finger. However, no fracture was disclosed in nasal bone. Dr. Dange has further stated that accused 2 was indoor patient in Civil Hospital till 13.2.87. He was under police escort. He was discharged at 2 p.m. on 13.2.87. Certificate dated 6.8.88 indicates that accused 2 was suffering from fracture of first phalanx of fourth finger.

38. PW 19 PSI Chavan has stated that on 13.2.87.accused 2 was brought from Civil Hospital Ratnagiri to the police station and he was arrested at 8-35 p.m. by drawing arrest panchnama Exh. 13. Blue T-Shirt and pant on his person were attached. There were bloodstains on these clothes. When muddemal article Nos. 14 and 15 respectively were shown to PSI Chavan, he identified them as the clothes of accused 2.

39. PW 3 Prakash Shinde who is a pancha to arrest panchnama Exh. 13 has stated that at the time of arrest accused 2 was wearing blue shirt and pant. There were blood stains on the front part of the shirt. There were bloodstains also seen on the hip of the pant worn by him. He has also stated that there was bandage on left hand little finger and ring finger of accused 2.

40. It is important to note the description of the clothes of accused 2 as given in the

panchnama.

1) 25.00 One blue coloured cotton T-shirt. Its neck is round. It has white coloured stripe. On the neck of the shirt at the inner side there is a lable. On the lable written in English as Golden P.G.N. 100% percent R.S. Lik Shangi Choina. From the neck of the T-Shirt up to down there are blood stains. On the left shoulder of the shirt there are red blood stains. While seeing the back portion of the shirt on the right side there are two holes and one blood stain. The sleeves of the T-Shirt are white colour and on the sleeves there are blue coloured round stripes. The left side of the T-Shirt there is a mark of pocket. It seems that the cloth of the pocket of T-Shirt is torn from its stitches.

2) 10.00 One ash coloured Zin clothe's suit pant having five loops on waist stripes for use of belt and having one steel loop on the front side. It has two pockets of white coloured cloth. At the front side there is a chain. The front portion of the right leg side of the pant is torn on knee. There is a mark of blood stains on the front leg side portion of the pant. There is a lable in English as Sciko on the back side of the waist of the pant. It has a pocket on the right back side and on the pocket there is a cloth stripe. On the left side of the pocket there is a mark of blood stains. On the buttock of the pant at the leg portion of the right and left side seems torn. There seems a mark of blood stains on the back of the both legs portion of the pant. The pant is old one. Prise about."

It is pertinent to note that bloodstains were found "on the back of the T-Shirt and also on the back of both legs portion of the pant."

41. The above medical evidence indicates that though accused 2 had given history of blood vomiting there was no visible mark of injury. He was referred for nasal bleeding. However, there was no nasal bleeding. He had received fracture injury. However, there were no external injuries. In such a situation finding of blood stains on the clothes of accused 2 at the time of his arrest is very material. Even if it is accepted that there was some nasal bleeding either because of the resistance offered by PW 1 Santosh or as stated by accused 2 in his written submissions, because of the force used by the police, the bloodstains at the most can be found on the front portion of the shirt and the trouser. It is true that blood group of the deceased and accused 2 is the same. But the finding of blood stains at the back of the T-Shirt and at the back of the trouser is inconsistent with the alleged nasal bleeding of accused 2. It is only consistent with the prosecution story that after stabbing the deceased accused 2 was running with a dagger in his hand and the deceased was chasing him with bleeding injuries in a futile attempt to over power him. We are, therefore, of the opinion that all these circumstances establish the guilt of accused 2.

42. Through evidence of some of the prosecution witnesses particularly PW 1 Santosh, the prosecution has tried to establish motive. It appears that there was strained relationship between the accused on the one hand and the deceased and PW 1 Santosh Salunkhe on the other hand. But since the evidence of prosecution witnesses, in our opinion, is consistent assuming motive is not proved that will not make weaken the prosecution case.

43. It is true that there is no recovery at the instance of accused 2. The dagger with

which assault was made has not been recovered. But that does not discredit the prosecution case. In Gurnek Singh & Anr. v. State of Punjab, 1988 (Supp.) S C C 807 the Supreme Court has held that, if there is other satisfactory and adequate evidence, the fact that the court has considered that it is not safe to rely on the evidence regarding recovery does not detract from the merits of the evidence of the eye-witnesses which has been considered to be beyond reproach. It is true that in this case on account of delay in recording the statements of the eyewitness, we have kept their evidence out of consideration, but there is other adequate oral and circumstantial evidence which in our opinion establishes the prosecution case. The fact that weapon of assault was not discovered does not adversely affect the prosecution case.

44. So far as injuries sustained by accused 2 are concerned, in his written statement he has stated that the injuries were caused because the police beat him. Even otherwise, it is quite possible that accused 2 received these injuries when the deceased offered some resistance to him. Non-explanation of injuries caused to accused 2, therefore, does not have any adverse impact on prosecution case.

45. Our attention was also drawn to the observations of the Supreme Court in Yudhishtir's case (supra), where the Supreme Court has observed that corroboration for any evidence given by a witness may be found necessary when a court is not inclined to reject the evidence of the witness to be false, but when the evidence of a witness has been rejected as unacceptable. , there is no scope for attempting to find corroboration by other independent evidence or other circumstances. The Supreme Court has further observed that when a particular fact deposed to by witnesses does not find mention both

in the F.I.R. and in statements recorded under Section 161, Cr. P.C. it is an improvement and it cannot be considered. It was urged that the evidence of the witnesses in this case will have to be rejected as unacceptable as there are some improvements and omissions. Therefore, there is no question of finding any corroboration to their evidence.

46. Reliance was placed on Appanna Yellawwa Madar & Ors. v. State, A.I.R. 1956 BOMBAY 471 where a Division Bench of this court has observed that where the eye-witnesses for the prosecution though unsophisticated were found clever enough to make improvements on the points which they thought material, it is a very serious infirmity particularly in a murder case and if such direct evidence is not wholly satisfactory, the subsidiary facts on which the prosecution relies, viz, the discovery of the axe, however suspicious cannot cure the infirmity.

47. Reliance was placed on Gurdial Sinh's case (supra), where the Supreme Court has held that when there are inconsistent versions of occurrence benefit of doubt must be given to the accused.

48. There can be no dispute about the above principles. However, in criminal cases there can never be any hard and fast rules as regards appreciation of evidence. Each criminal case has its own peculiar factual matrix. Though while appreciating the evidence, the court has to keep basic principles of criminal jurisprudence in mind, their application will depend on the facts of each case. In this connection we may refer to Shyam Sunder v. State of Chhattisgarh, (2002) 8 S.C.C. 39 The Supreme Court was dealing with a case where the accused was convicted for offence punishable under

Section 302 of the I.P.C. Certain inconsistencies and contradictions were pointed out to the Supreme Court. During the cross-examination of two witnesses their attention was invited to certain portions of the F.I.R. and their police statements in an effort to demonstrate that there were inconsistencies. The Supreme Court observed that when an incident is narrated by the same person to different persons on different occasions some difference in the mode of narrating the incident is bound to arise. However, such differences do not militate against the trustworthiness of the narration unless the variations can be held to be so abnormal or unnatural as would not occur if the witness would have really witnessed what he was narrating.

49. We may also refer to Sardul Singh v. State of Haryana, (2002) 8 S C C 372. Here also the Supreme Court was dealing with an appeal where the appellants were sentenced under Section 302 of the I.P.C. The Supreme Court laid down what should be the duty of court while appreciating evidence in criminal trial. We may usefully refer to the following observations of the Supreme Court;

"There cannot be a prosecution case with a cast-iron perfection in all respects and it is obligatory for the courts to analyse, sift and assess the evidence on record, its particular reference to its trustworthiness and truthfulness, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the same, without being obsessed by an air of total suspicion of the case of the prosecution. What is to be insisted upon is not implicit proof. It has often been said that evidence of interested witnesses should be scrutinized more carefully to find out whether it has a ring of truth and if found acceptable and seems to inspire confidence, too, in the mind of the court, the same cannot

be discarded totally merely on account of certain variations or infirmities pointed or even additions and embellishments noticed, unless they are of such nature as to undermine the substratum of the evidence and found to be tainted to the core. Courts have a duty to undertake a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to the broad and reasonable probabilities of the case also in their attempt to find out proof beyond reasonable doubt."

50. In Gangadhar Behera & Ors. v. State of Orissa, (2002) 8 S C C 381, while dealing with the plea that the witnesses were interested and hence their evidence should be discarded, the Supreme Court observed as under:

"The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible."

51. It was argued before us that some portion of the evidence of some of the witnesses is found unreliable and hence no reliance can be placed on the remaining evidence. It was further argued that if the entire evidence of some of the witnesses is found unreliable conviction can not be based on rest of the evidence. In our opinion, this argument must be rejected. While rejecting this argument we draw support from the following observations of the Supreme Court in Gangadhar Behera's case (supra);

"Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maximum "falsus in uno, falsus in omnibus" has no application in India and the witnesses cannot be branded as liars. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect it is to be feared that administration of criminal justice would come to a dead stop. The maximum "falsus in uno, falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in

the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto."

52. It was argued that in a case of this type the accused must get benefit of doubt. The following observations of the Supreme Court in Gangadhar Behera's case (supra) must be read in this connection:

"Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. Prosecution is not required to meet any and every hypothesis put forward by the accused. A reasonable doubt it not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. Vague hunches cannot take the place of judicial evaluation. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth."

53. We have viewed this case in the light of the above observations of the Supreme Court and, we are convinced that the prosecution has established its case beyond reasonable doubt as against the accused 2. It is true that as in most cases the prosecuting agency has committed some errors in investigation but they do not cut at the root of the case. It was pointed out that though some statements are recorded on 10.2.87, the date of verification is put as 9.2.87 and though some statements are recorded on 11.2.87. The date of verification is put as 10.2.87. The trial court has rightly come to the conclusion that this is an error. Similarly quick steps were not taken to record statements of eye-witnesses by going to Bombay on the ground that PSI Chavan was ordered not to leave Pedhambe because of tense situation. A proper site plan was not prepared and there is confusion about description of the situation of the suru tree.

54. In State of U.P. v. N. K. Anthony & Ors., A.I.R. 1985 S C 48, the Supreme Court has observed that attaching importance to some technical errors committed by the investigating agency not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. We are of the opinion that the errors committed by the prosecution do not discredit the prosecution story. In the circumstances of the case, the prosecution cannot be allowed to be frustrated on account of minor errors in investigation.

55. The facts of the case indicate that all the students were gripped with fear after the stabbing incident. Yet the F.I.R. was lodged soon after the incident. Considering the situation created by the stabbing incident, we do not feel that there is any inordinate delay in lodging F.I.R. Many of the statements were recorded on the next day. No doubt some

statements were recorded after enormous delay on the ground that the police officers had orders not to leave Pedhambe. We have advisedly kept them out of consideration though the trial court has relied upon them because we feel that we must guard against even a remote possibility of concoction. But the evidence of other witnesses appears to us to be consistent on the substratum of the prosecution case. Undoubtedly there are some differences and variations in the mode of narration of the witnesses but they do not militate against the trustworthiness of the narration.

56. As stated by the Supreme Court, the witnesses differ in some details because the power of observation, retention and reproduction differ with individuals. These variations are natural and in fact indicate that the witnesses are truthful. In this case the witnesses cannot be called interested witnesses. But assuming they are,it is not the law that evidence of all the interested witnesses must be discarded. Certain additions and embellishments are found in the evidence of all witnesses. We do not find in this case that there is any exaggeration as regards the core of prosecution case. Moreover even if some portion of the testimony of a witness is found to be unreliable his evidence need not be discarded in entirety. That part of the evidence which is found reliable can always be relied upon.

57. As held by the Supreme Court in Gangadhar Behera's case (supra) if the residue is sufficient to prove the guilt of an accused notwithstanding acquittal of a number of other co-accused, conviction of a person can be maintained. It is true that accused 1 is acquitted. But so far as involvement of accused 2 is concerned, we feel that it is made out from the residue of evidence.

58. In the ultimate analysis we find no difficulty in maintaining the conviction of accused 2.

59. In the view that we have taken, we dismiss the appeal. Accused 2 Satish Shriniwas Shetty is on bail. His bailbond is cancelled. He is ordered to surrender within a period of six weeks from the date of receipt of this order.

(SMT. RANJANA DESAI, J.)

(A. S. OKA, J.)